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PROCEDURE: ITS THEORY AND PRACTICE. By William T. Hughes. In two volumes. Chicago: Callaghan and Company. 1905. pp. x, 1–390; 401–1289. 8vo.

The aim of "Hughes on Procedure" is stated to be, — (1) to indicate that underlying the whole body of the law and bounding and defining its rights and remedies are certain general, large, and well defined principles of procedure, which pervade not only the adjective but the substantive law, and give to the law a unity and a philosophy which can be discovered only by a study of procedure; (2) to ascertain those general principles of procedure as they have found expression both in the adjudged cases and in maxims; (3) to devise a plan of work whereby the maxims and the cases are worked in together, so that the general principles of procedure are indicated, as well as their particular applications in the cases and text-books.

In order to attain his end the author in his first part has shown that courts and laws exist for the purpose of defining by a judicial record the citizen's right. This record requirement, while not expressed, is interwoven in the constitutional guaranty of due process of law, which is the supreme law of the land. Mr. Hughes has looked at the record from the standpoint of the preservation of the division of state power, which is a constitutional implication. In the departments of appellate procedure, collateral attack, *res adjudicata* (including former jeopardy and estoppel by record), removal of causes from state to federal courts, and of the comity between the courts of different jurisdictions, the essentials of procedure are examined, and it is shown that a procedure which requires proper allegations of fact before a court having jurisdiction of the subject and parties and a judgment or decree responsive to the allegations, which written allegations and judgment or decree form the record, is a necessary constitutional implication. The doctrines of constructive notice of judicial proceedings and of justification of official acts depend upon such a system of procedure. The rules which govern the election of remedies, the exceptional rules arising from public policy, the rules of construction applied to laws and documents, and the rules to avoid delays in judicial proceedings, make a body of rules qualifying the making of the record. Finally is stated the rule which requires that when a record has been made, its existence is determined by its own inspection.

By a statement of the rules applying to appellate procedure and to matter which can be waived, he shows clearly the differences between the record proper and the statutory record.

There is, so far as we are aware, no work on pleading or practice where the line of thought found in this book has been followed. The author seems to have succeeded in generalizing the requirements of a sound procedure under all civilized systems of law.

The second part of the work shows those maxims which govern the making and ascertainment of a proper record, including those maxims of construction which govern not only the effect of records, but the effect of evidence which is being adduced to cause the court to make its adjudication, and which, when responsive to the pleadings, becomes the completion of the record.

The third part of the work consists of what is called the "Text-Index," which is a combination of leading cases and maxims, all indexed not only under the names of the cases and the leading words of the maxims, but also under the index heads of any ordinary legal digest. By cross references all the material to be found in the "Text-Index" can be concentrated on one particular subject. This part of the work can be utilized by one who has the name of a leading case, or the words of a maxim or merely the general digest head. At page 44 of the work the author explains simply and clearly how to use the "Text-Index."

The value of this "Text-Index" is that it refers to the leading text-books, the leading cases, the controlling maxims, and gives in the form of text short, concise statements of the law, and in the form of citations not only the leading cases but the cases of lesser importance and authority bearing upon the subject, with full references to all the notes in the annotated reports and to the text-books. Any lawyer is here given the full benefit of all the books in a large library without the labor of hunting out citations. As a statement of law and

cases the book can be used by itself, but it is at the same time an exhaustive citation of the books where the law upon the subject may be found in its fullest detail.

The effort of the abridger, the digester, and the text-book writer has been to render the vast bulk of the law more manageable. The fault with those methods is that they do not lay enough stress upon the difference in value between adjudications. To the abridger, the digester, and the encyclopedia writer all decisions are of the same importance. The same fault is noticeable in some text-books. But in the literature of the law just as in general literature, men must be constantly throwing away inferior matter. The value of the leading case system is that it places stress upon the decisions that are of highest value. The maxim classifies isolated cases under general principles. The text-book concentrates attention upon selected branches of the law. If now a subject in the law which moulds all others, can be so treated that by leading cases the valuable literature is indicated, by other cases of less value the applications of the general principle shown, and by the maxim the different branches of legal doctrine co-ordinated under certain general principles, while by concise text the various branches of the subject are indicated in its ramifications, the result will be a great boon to lawyers. Such a law book has been attempted in Hughes on Procedure. The learning of the author appears to be ample. Many of his ideas are new and convincing. His acquaintance with the literature of the subject is undoubtedly the result of vast and close reading. Lawyers and students will find this book not only intensely practical, but at the same time full of new ideas on procedure, which has always been the most important matter in our jurisprudence.

J. M. Z.

THE RULE AGAINST PERPETUITIES. By John Chipman Gray. Second Edition. Boston: Little, Brown, and Company. 1906. pp. xlvii, 664. 8vo.

The new edition of Professor Gray's Rule against Perpetuities makes a volume of 664 pages, as against 499 pages of the first edition. With some of the additional material the reader is already familiar. It is pleasant to note that the appendix contains the substance of an article on Future Interests in Personal Property, originally published in the HARVARD LAW REVIEW, not omitting the delightful Socratic dialogue which started the re-examination of the subject. The discussion to which the decision in Whitby *v.* Mitchell (42 Ch. D. 494; 44 Ch. D. 85) gave rise is made the subject of brief comment in § 298 a–298 h. In view of this decision, the rule which it recognizes can hardly be spoken of as a non-existent rule, and it is strange that § 290 of the first edition in which the rule is thus referred to should have remained unaltered.

Notwithstanding the elaborate argument against determinable fees in a new appendix, Professor Gray seems now inclined to concede their validity at least for charitable purposes, although he always notices statutory interests of a similar character in streets and mining lands. We should say of this form of limitation what Professor Gray says of the validity of temporary charities with resulting trusts, that the doctrine, however objectionable, seems established (§ 41 a). After all, it is only little more objectionable than the recognition of a fee in land subject to the easement of a highway or railroad.

Perhaps the most interesting question (if it can still be called a question) in the rule against perpetuities is whether the rule is directed against remoteness of vesting or against inalienability. The commonly accepted view is that it is a rule against remoteness, and that the alienability of the remote interest does not prevent it from being void. Professor Gray's influence has perhaps been decisive in gaining acceptance for this view in this country. In England, authority has settled in its favor, though only in comparatively recent times; it is impossible to read the earlier cases without feeling that the great objection to perpetuities was inalienability. We gather from Mr. Gray's treatise that, as a rule against remoteness, the rule against perpetuities is notable chiefly for its exceptions. The most important practical applications of alienable, yet